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May 14, 2015

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Kris Anne Monteith  
Acting Chief, Consumer and Governmental  
Affairs Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: *Ex Parte* Presentation**

*Telecommunications Relay Services and Speech-to-Speech Services for  
Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123; Misuse  
of Internet Protocol (IP) Captioned Telephone Service, CG Docket No. 13-24,  
Petition for Declaratory Ruling of Sorenson Communications, Inc. and  
CaptionCall, LLC to Ensure Competition in Internet Protocol Captioned  
Telephone Service*

Dear Ms. Dortch and Ms. Monteith:

Pursuant to Section 1.1206(b)(2) of the rules of the Federal Communications Commission ("FCC" or "Commission"),<sup>1</sup> Ultratec, Inc. ("Ultratec"), by and through its attorneys, files this written *ex parte* presentation and memorandum summarizing an oral *ex parte* presentation in connection with the above-referenced Commission proceeding. In addition, this letter further updates the Commission regarding recent developments related to the patent litigation between Ultratec and Sorenson Communications, Inc. and CaptionCall, LLC

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<sup>1</sup> 47 C.F.R. § 1.1206(b)(2).

(collectively “Sorenson”) that occurred shortly after the aforementioned *ex parte* presentation. Specifically, the United States District Court for the Western District of Wisconsin (“Court”) issued on May 13, 2015 an order granting Sorenson’s motion to stay the Court proceedings (“Stay”) in that case pending review by the United States Court of Appeals for the Federal Circuit (“Federal Circuit”) of the United States Patent and Trademark Office’s Patent Trial and Appeal Board (“PTAB”) decisions invalidating certain Ultratec patents.<sup>2</sup> In connection with this Stay, the Court denied without prejudice all pending post-verdict motions related to the litigation, including Ultratec’s motion for a limited injunction.

On May 12, 2015, Ultratec’s FCC counsel, Phil Marchesiello of Wilkinson Barker Knauer, LLP, and the undersigned patent litigation counsel (collectively “Ultratec’s Attorneys”) participated in a conference call with Greg Hlibok, Robert Aldrich, Eliot Greenwald, and Caitlin Vogus of the Commission’s Consumer & Governmental Affairs Bureau (“CGB”). As further set forth herein, Ultratec’s Attorneys addressed during the call the most recent histrionic request by Sorenson for the Commission unilaterally to impose an obligation on Ultratec to indiscriminately license its proprietary Internet Protocol Caption Telephone Service (“IP CTS”) patents to Sorenson.<sup>3</sup> Ultratec’s Attorneys also addressed Sorenson’s prior misrepresentations to the Commission regarding the negotiations between Ultratec and Sorenson about the licensing of Ultratec’s IP CTS patents, as well as Sorenson’s refusal to permit Ultratec to provide the Commission with comprehensive information about the parties’ licensing negotiations and settlement discussions in connection with the patent litigation. Finally, Ultratec’s Attorneys provided the Commission with an update regarding the status of the patent litigation. (As noted above, however, the information about the patent litigation provided by Ultratec’s Attorneys has since been superseded by the issuance of the Stay by the Court.)

### **The Commission Should Not Grant Sorenson’s Requested Relief**

The Commission should not attempt to force Ultratec to license its patents to a company that has been adjudicated to have built its IP CTS business by infringing Ultratec’s intellectual property rights – without so much as requesting a license from Ultratec.<sup>4</sup> Ultratec’s prior filings

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<sup>2</sup> *Ultratec, Inc. v. Sorenson Commc’ns, Inc.*, Opinion and Order, Case No. 13-cv-346-bbc (W.D. Wis. May 13, 2015).

<sup>3</sup> See *Ex Parte* Letter from Michael B. DeSanctis, counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, and Kris Anne Monteith, Acting Chief, CGB, FCC, CG Docket Nos. 03-123 and 13-24 (filed Apr. 30, 2015) (“Sorenson April 30 *Ex Parte* Letter”).

<sup>4</sup> Comments of Ultratec, Inc. and CapTel, Inc. on Petition Filed by Sorenson Communications, Inc. and CaptionCall, LLC Regarding Licensing of Internet Protocol Captioned Telephone Service, CG Docket Nos. 03-123 and 13-24, at 8-15 (filed Dec. 29, 2014) (“Ultratec Comments”).

in this proceeding demonstrate that such a mandatory licensing regime is unwarranted, unnecessary, and inconsistent with Commission precedent.<sup>5</sup> The Commission developed a technology-neutral definition for IP CTS that does not require the use of any particular technology standard.<sup>6</sup> Further, imposing such a mandatory licensing requirement would undermine the incentive of telecommunications relay service (“TRS”) providers to compete through innovation and upset the constitutionally mandated bargain between the government and patent holders such as Ultratec.<sup>7</sup> Moreover, this matter is the subject of both a judicial proceeding before the Court, which has ample experience and expertise adjudicating patent disputes and has spent two years adjudicating the matter, as well as several PTAB proceedings.<sup>8</sup> Also, in an effort to settle these proceedings and enable the parties to focus their resources on serving their customers, Ultratec offered Sorenson a license at reasonable rates to utilize Ultratec’s patents.<sup>9</sup>

To be clear, however, Ultratec does not believe that Sorenson has any intention of taking a license from Ultratec, despite the fact that Sorenson continues to willfully infringe Ultratec’s patents. Instead, Sorenson merely wanted the Commission to take regulatory action in this proceeding to interfere with the Court’s review of post-verdict motions filed in the patent litigation (which the Court has now stayed), as well as the limited injunction and on-going royalty that Ultratec sought. Sorenson would contend that any licensing requirement imposed by the FCC necessarily would drive down if not eliminate the rate that Sorenson would be obligated to pay Ultratec for Sorenson’s past and continued infringement, as well as nullify any right Ultratec has to enforce its patents. Indeed, Ultratec does not believe that Sorenson will take a license from Ultratec if the Commission acts on Sorenson’s request, and Ultratec notes that Sorenson has not represented to the Commission that it will pay for a license to Ultratec’s patents. Instead, Sorenson simply would attempt to use the Commission’s actions as a specious basis to seek a retrial in the Court.

Thus, Sorenson’s request for the Commission to resolve this proceeding with a “simple” and “short statement” is a subterfuge.<sup>10</sup> The mere fact that Sorenson has requested such facile

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<sup>5</sup> See *Ex Parte* Letter from Phil R. Marchesiello, counsel to Ultratec, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 13-24, at 2 (filed Feb. 23, 2015) (“Ultratec Feb. 23 *Ex Parte* Letter”); Ultratec Comments at 16-34.

<sup>6</sup> See Ultratec Feb. 23 *Ex Parte* Letter at 2; Ultratec Comments at 5, 13-14, 22-24.

<sup>7</sup> See Ultratec Feb. 23 *Ex Parte* Letter at 2; Ultratec Comments at 24-27.

<sup>8</sup> See Ultratec Comments at 8-11, 33-34.

<sup>9</sup> See Ultratec Feb. 23 *Ex Parte* Letter at 2; Ultratec Comments at 8, 15, 21.

<sup>10</sup> Sorenson April 30 *Ex Parte* Letter at 2, 4.

and substantively vacuous relief from the Commission demonstrates that Sorenson's actual objective is to use the FCC as a pawn in the private litigation between the parties. Moreover, it would be wholly inappropriate for the Commission to now fundamentally revise a prior Commission decision that has been final and unappealable for more than seven years<sup>11</sup> with a "simple" and "short statement" that ignores the substantial record developed in this proceeding.<sup>12</sup>

### **Sorenson Fundamentally Mischaracterizes Ultratec's Injunction Request**

In the Sorenson April 30 *Ex Parte* Letter, Sorenson asserts that Ultratec's request for a limited injunction in the ongoing patent litigation between Ultratec and Sorenson "would destroy the competitive market for IP CTS" and "likely driv[e Sorenson's affiliate] CaptionCall from the industry" causing "massive disruption" and "harm to the public interest."<sup>13</sup> This hyperbole is fundamentally inaccurate. As an initial matter and as thoroughly set forth in the record in this proceeding, the injunction requested by Ultratec was expressly and purposefully structured to protect Ultratec's patent rights while avoiding any public interest harm to IP CTS users. Moreover, Ultratec's request for the Court to issue a limited injunction has now been dismissed without prejudice and therefore will not be granted by the Court in the near future.

Nevertheless, it is worth noting that Ultratec only requested that the Court enjoin Sorenson from providing service to any *new* IP CTS customers *in a manner that infringes* Ultratec's patents. Ultratec agreed to permit Sorenson's existing IP CTS customers as of the date of the injunction to continue to receive Sorenson's infringing IP CTS service. Ultratec voluntarily limited its injunction request in this manner to avoid any disruption to these users, although Ultratec asked the Court to award it court-determined royalties for Sorenson's continued infringement of Ultratec's patents.<sup>14</sup> Thus, had the Court issued the limited injunction requested by Ultratec, Sorenson would have been able to continue to serve its existing IP CTS

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<sup>11</sup> See Ultratec Comments at 17-20; see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 22 FCC Red 379 (2007) ("2007 Declaratory Ruling").

<sup>12</sup> In addition, Ultratec would have no choice but to challenge any "simple" and "short statement" issued by the Commission significantly altering the meaning of the *2007 Declaratory Ruling*. Consequently, Sorenson's suggestion that the Commission can avoid any substantive consideration in this proceeding by adopting its requested relief is mistaken.

<sup>13</sup> See Sorenson April 30 *Ex Parte* Letter at 2.

<sup>14</sup> See Ultratec Comments at 9-11, 15-16.

customers using Ultratec's patented technology at court-approved royalty rates.<sup>15</sup> Sorenson merely would have been prohibited from expanding its IP CTS service by registering and serving new IP CTS customers using technology that infringes on Ultratec's patents.<sup>16</sup>

### **Sorenson Has Misrepresented Ultratec's Settlement Offers**

In its February 27, 2015 *ex parte* letter to the Commission,<sup>17</sup> Sorenson, through its counsel Jenner & Block, represented to the Commission that "despite its misrepresentation to the contrary, Ultratec has not offered CaptionCall a license to use its allegedly patented technology for CaptionCall's provision of IP CTS at a reasonable rate. Instead, Ultratec has merely offered to CaptionCall the opportunity to serve as yet another reseller of Ultratec's technology as Hamilton and Sprint currently do . . . ."<sup>18</sup> These statements are false. Ultratec has never offered to provide a license to Sorenson as a reseller and does not intend to do so in the future.<sup>19</sup> Ultratec has spent the past two months attempting to cause Sorenson to correct the record, but has been unsuccessful in this effort. Consequently, Ultratec feels compelled to now correct the record itself and provide the Commission with evidence of Sorenson's refusal to do so.

At the time of Sorenson's February 25, 2015 *ex parte* meeting with the Commission (described in the Sorenson Feb. 27 *Ex Parte* Letter), no one at Jenner & Block should have

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<sup>15</sup> If the Court denies the injunction request, then the Court has in its discretion the right to establish a royalty rate going forward that Sorenson should pay to Ultratec if Sorenson continues to infringe Ultratec's patents instead of developing its own IP CTS technology.

<sup>16</sup> Further, Sorenson would have been able to continue to market to new customers if it provided IP CTS in a manner that does not infringe Ultratec's patents, either by using known methods (e.g., fast typists or CART technology) or by innovating and creating new methods. *See 2007 Declaratory Ruling*, 22 FCC Rcd at 387-89 ¶¶ 20-23.

<sup>17</sup> *Ex Parte* Letter from Michael B. DeSanctis, counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, and Kris Anne Monteith, Acting Chief, CGB, FCC, CG Docket Nos. 03-123 and 13-24 (filed Feb. 27, 2015) ("Sorenson Feb. 27 *Ex Parte* Letter").

<sup>18</sup> *Id.* at 3 (internal citations omitted).

<sup>19</sup> *See* Letter from Kristin Graham Noel, counsel to Ultratec, to Michael B. DeSanctis, *et al.*, counsel to Sorenson, at 2 (dated Mar. 6, 2015) (attached hereto as Exhibit A) ("Quarles March 6 Letter"). As Ultratec previously has explained in this proceeding, its current agreements with Sprint Corporation and Hamilton Relay, Inc. constitute technology licenses and are not merely reseller agreements. *See* Ultratec Comments at 6 n.13; *see also* Reply Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123 and 13-24, at 2 (filed Jan. 13, 2015) ("Hamilton *licenses* CapTel, Inc.'s technology under terms and conditions that the companies mutually negotiated.") (emphasis added). CapTel, Inc., in turn, holds a license to Ultratec's patents.

known of the substance of any settlement offer that Ultratec had made to Sorenson because the settlement offers were confidential to Ultratec under a Protective Order issued by the Court in the patent litigation. Sorenson, of course, had actual knowledge of all of Ultratec's settlement offers, and therefore should have prevented its counsel from misrepresenting the facts to the Commission in the Sorenson Feb. 27 *Ex Parte* Letter.

Ultratec privately approached Jenner & Block (as well as Sorenson's litigation counsel, Baker Botts L.L.P., and mediation counsel, Akin Gump Strauss Hauer & Feld LLP), to inform them of the misstatements, provide Sorenson with an opportunity to correct the record, and arrange for the parties to jointly, fully disclose to the FCC under a request for confidentiality the substance of *all* licensing negotiations between the parties.<sup>20</sup> In response, Jenner & Block confirmed to Ultratec's counsel that they did not know the substance of the settlements offers between the parties prior to filing the Sorenson Feb. 27 *Ex Parte* Letter.<sup>21</sup> However, as set forth in the Sorenson Feb. 27 *Ex Parte* Letter, this did not stop Jenner & Block from making explicit (but inaccurate) representations to the Commission regarding those same settlement offers. In addition, despite Ultratec's outreach efforts,<sup>22</sup> Sorenson chose not to correct its prior misstatement in its most recent communication to the Commission, the Sorenson April 30 *Ex Parte* Letter.

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<sup>20</sup> See Quarles March 6 Letter at 2-4; *see also infra* pp. 7-9.

<sup>21</sup> See Letter from Michael B. DeSanctis, counsel to Sorenson, to Kristin Graham Noel, counsel to Ultratec, at 1 (dated Mar. 17, 2015) ("Jenner March 17 Letter") ("At no time prior to my being admitted as counsel in the Wisconsin litigation [March 9, 2015] did anyone share with me the substance of Ultratec's settlement offers or any other Ultratec Confidential Information protected under the Protective Order. The same is true for all of my colleagues at Jenner & Block.") (attached hereto as Exhibit B). The Jenner March 17 Letter responded to a prior correspondence from Ms. Noel, Ultratec's litigation counsel, seeking additional information about whether Sorenson violated a Protective Order related to Ultratec and Sorenson's patent litigation by impermissibly sharing information about their settlement negotiations with Jenner & Block attorneys who were not parties to the Protective Order. See Letter from Kristin Graham Noel, counsel to Ultratec, to Michael B. DeSanctis, counsel to Sorenson, at 1 (dated Mar. 16, 2015) ("Quarles March 16 Letter") ("Did you or your colleagues at Jenner & Block know of the substance of Ultratec's offers prior to your representation to the FCC regarding those offers?") (attached hereto as Exhibit C).

<sup>22</sup> See Email from Kristin Graham Noel, counsel to Ultratec, to Douglas J. Wilson, counsel to Sorenson (Mar. 27, 2015, 6:38pm) ("Quarles March 27 Email") ("Moreover, while you and your firm may have been ignorant of the offers that Ultratec made to Sorenson, you now are on notice of the falsity of your representations to the FCC. How do you intend to address that?") (attached hereto as Exhibit E).



### **Sorenson Has Refused to Permit Ultratec to File with the Commission Comprehensive Information about the Parties' Licensing Negotiations**

To ensure that the Commission is accurately and fully informed regarding the scope of *all* of the licensing negotiations that have taken place between Ultratec and Sorenson, and in light of Sorenson's prior misstatements discussed above, Ultratec repeatedly has requested for Sorenson to agree for the parties to mutually provide "an accurate, confidential, disclosure of the facts to the FCC as they relate to Ultratec and Sorenson's license discussions,"<sup>23</sup> including "documentation of the written offers, as well as verbal offers involving licenses."<sup>24</sup> Ultratec's request was consistent with Sorenson's representation to the Commission in the Sorenson Feb. 27 *Ex Parte* Letter that Sorenson would "provide [the FCC] with documentation of what exactly Ultratec has offered to CaptionCall."<sup>25</sup> Sorenson initially agreed both to Ultratec's request to comprehensively share the substance of the parties' licensing negotiations with the Commission and under what terms to disclose the information.<sup>26</sup> However, Sorenson abruptly reversed this

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<sup>23</sup> Quarles March 6 Letter at 2; *see also* Quarles March 16 Letter at 1 ("[W]e agree that the parties should confidentially inform the FCC of the offers each made to the other (as outlined in our initial letter)."); Quarles March 16 Letter at 2 ("I suggest we have a phone call early next week to discuss . . . the scope of information that the parties agree to provide to the FCC and the procedures that the parties will use to accomplish such disclosure.").

<sup>24</sup> Quarles March 6 Letter at 4 ("Ultratec is agreeable to sharing with the FCC the actual offers, counteroffers and discussions to correct Sorenson's misstatements. However, Ultratec will not do so in violation of the Protective Order or Mediation Agreement, nor in any way waive the confidentiality of Ultratec's information or rights under Federal Rule of Evidence 408. Accordingly, Ultratec demands the following: Ultratec and Sorenson agree to share the documentation of the written offers, as well as verbal offers involving licenses with the FCC, Under Seal; and pursuant to a request for confidentiality under Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission's rules . . .").

<sup>25</sup> Sorenson Feb. 27 *Ex Parte* Letter at 3 ("The staff requested that CaptionCall provide them with documentation of what exactly Ultratec has offered to CaptionCall. CaptionCall, of course, plans to comply with that request.").

<sup>26</sup> *See* Letter from Michael B. DeSanctis, counsel to Sorenson, to Kristin Graham Noel, counsel to Ultratec, at 1 (dated Mar. 12, 2015) ("Jenner March 12 Letter") ("[We can accept the approach you have outlined on page 4 of your March 6 letter. We agree that all settlement information and offers will remain confidential under the protective order, subject to Federal Rule of Evidence 408, and not subject to FOIA. As you have requested, we can agree that each party will share with the Commission staff the documentation relevant to the settlement offers, pursuant to a formal request for confidentiality, and that we both will serve our respective filings with each other.] (attached hereto as Exhibit D).

position after Ultratec made Jenner & Block aware of the falsity of the statement in the Sorenson Feb. 27 *Ex Parte* Letter discussed above. Without explanation, Sorenson simply refused to permit Ultratec to file the information with the Commission<sup>27</sup> and then subsequently stopped responding to Ultratec's further communications regarding the matter.<sup>28</sup> Sorenson presumably reversed its position and refused to agree to provide the Commission with all relevant information because these materials would prove that Sorenson's statements to the Commission, both in person at the February 25 meeting and in the Sorenson Feb. 27 *Ex Parte* Letter, were false. In addition, when holistically viewed, the parties' prior licensing negotiations and settlement negotiations indicate that Sorenson has no intention of licensing Ultratec's patents.

Moreover, Sorenson now argues that "the Commission need not engage in *any* fact finding about the existence or sufficiency of licensing offers or make *any* determinations about what would or would not be a reasonable licensing rate."<sup>29</sup> Further, Sorenson suggests that issues of confidentiality or Federal Rule of Evidence 408 somehow explain why the parties still have not submitted the settlement terms requested by the Commission.<sup>30</sup> This is not the case.

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<sup>27</sup> See Email from Douglas J. Wilson, counsel to Sorenson, to Kristin Graham Noel, counsel to Ultratec (Mar. 27, 2015, 2:32pm) ("Jenner March 27 Email") ("We cannot agree to produce the settlement communication you identified to the FCC.") (attached hereto as Exhibit E). Ultratec previously sent to Sorenson's counsel documentation of the written and verbal settlement negotiations between Ultratec and Sorenson that Ultratec proposed for the parties to file with the Commission. One week later, Sorenson's counsel simply refused without explanation to agree to file the materials with the Commission. *Id.* Sorenson thereafter did not respond to Ultratec's counsel's repeated efforts to determine why Ultratec ultimately decided to withhold this information from the Commission despite Sorenson's earlier commitment to the Commission to provide the information.

<sup>28</sup> Ultratec has twice attempted to contact Sorenson's counsel to inquire about Sorenson's justification for refusing to permit Ultratec to provide complete information to the Commission about the parties licensing negotiations and instead only agreeing to provide the Commission with selective and misleading information. See Quarles March 27 Email ("What is Sorenson's basis for providing the FCC with incomplete information? Ultratec will not agree to any course of action that misleads the FCC, and thus does not consent to providing the FCC with only the attached documentation in the absence of the other licensing discussions, particularly in light of the false representations that Sorenson has made in your *ex parte*."); see Email from Kristin Graham Noel, counsel to Ultratec, to Douglas J. Wilson, counsel to Sorenson (Apr. 13, 2015, 1:53pm) ("Quarles April 13 Email") ("[W]e have not received a response to this email [Quarles March 27 Email], which we sent some 17 days ago. Please advise.") (attached hereto as Exhibit E). Sorenson has not responded to either communication.

<sup>29</sup> Sorenson April 30 *Ex Parte* Letter at 2.

<sup>30</sup> See *id.* at 3, n.11.



Rule 408 does not prevent the parties from disclosing anything to the Commission. It merely renders settlement discussions inadmissible in federal court. Rule 408 is not a confidentiality rule and nothing in Rule 408 is waived if the information is provided to the Commission. In addition, Sorenson previously represented to the Commission that it would provide all such information,<sup>31</sup> and previously agreed with Ultratec in writing to do so – under seal and without waiving Rule 408.<sup>32</sup> Despite Sorenson’s reversal of this position and current intransigence, Ultratec remains willing and ready to provide the Commission (under a request for confidentiality, but without waiving Rule 408) information about *all* of the licensing negotiations and settlement offers between Ultratec and Sorenson to date. However, Ultratec is unable to do so without Sorenson’s approval due to the Protective Order issued by the Court and a Mediation Agreement between the parties.

### **Status of Court and Patent Trial and Appeal Board Proceedings**

Ultratec’s Attorneys also discussed with the Commission staff the then current status of the patent litigation between Ultratec and Sorenson, including the March 2015 decisions by the PTAB purportedly invalidating certain claims of eight Ultratec patents as part of an *inter partes* review of the patents initiated by Sorenson.<sup>33</sup> Ultratec contends that these PTAB decisions were erroneous and has requested a rehearing before the PTAB. Should the PTAB not grant a rehearing, Ultratec intends to appeal the PTAB decisions to the Federal Circuit. Further, Ultratec explained that the Court was considering a variety of post-verdict motions by each party in the pending patent litigation, including Ultratec’s request for a limited injunction, and that either party could appeal the Court’s decision on the motions to the Federal Circuit. However, as set forth above, the Court yesterday granted Sorenson’s motion to stay all proceedings in the patent litigation until any appeals of the PTAB’s decisions are completed. Consequently, the Court dismissed the parties’ remaining post-trial motions without prejudice to the parties renewing those motions if necessary after the resolution of the appeals of the PTAB decisions. Ultratec currently is reviewing the Stay and considering its options in light of the Court’s decision. In light of the issuance of the Stay, however, it makes little sense for the Commission to expend more of its scarce resources at this stage.

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<sup>31</sup> Sorenson Feb. 27 *Ex Parte* Letter at 3 (“The staff requested that CaptionCall provide them with documentation of what exactly Ultratec has offered to CaptionCall. CaptionCall, of course, plans to comply with that request.”).

<sup>32</sup> See *supra* note 26 and accompanying text.

<sup>33</sup> See March 3, 2015 Final Written Decisions released by the PTAB in: Case IPR2013-00540; Case IPR2013-00541; Case IPR2013-00542; Case IPR2013-00543; Case IPR2013-00544; Case IPR2013-00545; Case IPR2013-00549; Case IPR2013-00550.

Marlene H. Dortch  
Kris Anne Monteith  
May 14, 2015  
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Please do not hesitate to address any questions about the foregoing to the undersigned.

Sincerely,

/s/ Kristin Graham Noel

Kristin Graham Noel  
*Counsel to Ultratec, Inc.*

KGn: ddh  
cc (via e-mail):

Greg Hlibok  
Robert Aldrich  
Eliot Greenwald  
Caitlin Vogus

# **EXHIBIT A**

Quarles March 6 Letter



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March 6, 2015

**VIA EMAIL**

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RE: Sorenson's Misstatements to the FCC, Apparent and Threatened Violations of Court Orders in *Ultratec, Inc., et al. v. Sorenson Communications, et al.* and of the Mediation Agreement

Dear Counsel:

This letter addresses false statements made by Sorenson Communications, Inc. and CaptionCall, LLC (collectively "Sorenson") to the FCC regarding past license offers that Ultratec, Inc. and CapTel, Inc. (collectively, "Ultratec") have made to Sorenson. Further, we are

concerned that Sorenson may have improperly disclosed, and plans to further disclose, information subject to the protective order that is in place in both cases 13-cv-346 and 14-cv-66 (W.D. Wis.) (“the Protective Order”) and/or the mediation agreement between Sorenson and Ultratec (the “Mediation Agreement”). Specifically, Sorenson has represented to the FCC both in person and in a February 27, 2015, letter that “despite its misrepresentation to the contrary, Ultratec has not offered CaptionCall a license to use its allegedly patented technology for CaptionCall’s provision of IP CTS at a reasonable rate. See Ultratec February 23 Letter at 2. Instead, Ultratec has merely offered to CaptionCall the opportunity to serve as yet another reseller of Ultratec’s technology as Hamilton and Sprint currently do....” These statements are false. Indeed, Ultratec has never offered -- and will never allow -- Sorenson to become its reseller. In light of these misstatements to the FCC, we demand that Sorenson join Ultratec in making an accurate, confidential, disclosure of the facts to the FCC as they relate to Ultratec and Sorenson’s license discussions.

Moreover, we are troubled by the fact that Sorenson is making representations to the FCC regarding the existence or non-existence of license offers when the parties have engaged in a number of settlement discussions that were either subject to the Protective Order, the Mediation Agreement, or both. It is unclear whether and to what extent Sorenson has shared the substance of those discussions, without seeking Ultratec’s consent. Therefore, we demand that Sorenson fully disclose to Ultratec what confidential information (as that term is understood under the Protective Order and/or the Mediation Agreement) Sorenson has disclosed, when and to whom, so Ultratec can assess the breadth of the violations, if any. As you are aware, the Protective Orders in the district court cases contemplate sanctions, including but not limited to a finding of contempt of court.

In addition to the pre-trial license offers (which did not allow Sorenson to be a reseller), Ultratec has made Sorenson various settlement offers that were expressly made under the Protective Order, and further protected by Federal Rule of Evidence 408. Ultratec’s offers were not only designated under the Protective Order, but confirmed subject to the Protective Order by Mr. Brian Oaks, in writing, on August 15, 2014.

The Protective Order forbids disclosure of Confidential Information without the prior written approval of the disclosing party. (Stipulated Modified Protective Order, ¶ 3(a)-(b); *see also id.* at Exhibit B, ¶ 5 (“I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any Materials and Information marked “CONFIDENTIAL” that are disclosed to me.”).) The Protective Order further states that “No use shall be made of Confidential, Highly Confidential-Outside Counsel Only, or Highly Confidential-Outside Counsel Only-Prosecution Bar Information, Materials, or premises by any recipient under subsections (a)-(b) *except in connection with the judicial or private resolution of this matter.*” (*Id.*, at ¶ 3(c) (emphasis added).

In addition, the parties engaged in discussions post-trial, between Mr. Tomaselli and Mr. Boren. Again, Ultratec's offer was Ultratec's Confidential Information, subject to the Protective Order and Federal Rule of Evidence 408.

Thereafter, the parties engaged in a mediation before the Honorable Judge T. John Ward, during which various offers were made subject to the Mediation Agreement. The Mediation Agreement states:

The parties *shall maintain the confidentiality* of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial *or other proceeding*: (a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; (b) admissions made by another party in the course of the mediation proceedings; (c) proposals made or views expressed by the Mediator; or (d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

(Mediation Agreement, ¶ 13.)

Finally, Ultratec (first through Mr. Tomaselli and later, Mr. Seay) held further discussions with Sorenson (through Mr. Zager), which was Ultratec's Confidential Information subject to the Protective Order. Ultratec's written offers were designated confidential and subject to the mediation privilege.

The Protective Order and the Mediation Agreement preclude Sorenson from revealing the substance of the settlement discussions to the FCC or the public at large. Indeed, unless Messrs. Maddix, Dunn and Peterson previously executed Undertakings under the Protective Order, they were not qualified to receive Ultratec's Confidential Information. (See Protective Order, ¶ 3(b)). We have no Undertaking from these gentlemen. Similarly, Messrs. DeSanctis and Wilson have not been cleared under the Protective Order to receive Ultratec's Confidential Information. Please immediately confirm what was stated to whom and when, and why any such disclosures did not violate the Protective Order and/or the Mediation Agreement. Of course, even if Mr. DeSanctis did not know of the substance of the offers made by Ultratec to Sorenson, Sorenson had actual knowledge of the offers and thus the falsity of Mr. DeSanctis's statements to the FCC, both in person and in the February 27 letter.

Moreover, in Sorenson's February 27 letter, Sorenson states that the "staff requested that CaptionCall provide them with *documentation of what exactly Ultratec has offered* to CaptionCall. CaptionCall, of course, plans to comply with that request." (Emphasis added) It is clear that Sorenson either intends to violate the Protective Order and the Mediation Agreement, or to mislead the FCC by providing only a partial record of the discussions.



In its dealings with the FCC, Ultratec informed the FCC that it was under a duty of confidentiality as it related to certain discussions and was very careful not to violate the terms of the Protective Order or the Mediation Agreement. Ultratec has only disclosed what information it was able to disclose. Ultratec is agreeable to sharing with the FCC the actual offers, counteroffers and discussions to correct Sorenson's misstatements. However, Ultratec will not do so in violation of the Protective Order or Mediation Agreement, nor in any way waive the confidentiality of Ultratec's information or rights under Federal Rule Evidence 408.


Accordingly, Ultratec demands the following:

- Ultratec and Sorenson agree to share the documentation of the written offers, as well as verbal offers involving licenses, with the FCC, **Under Seal**; and pursuant to a request for confidentiality under Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission's rules; each party will share its respective filing with the other party;
- Ultratec and Sorenson agree the information continues to be Confidential under the Protective Order and the Mediation Agreement;
- Ultratec and Sorenson agree that all of the offers of settlement continue to be treated as settlement offers under Federal Rule of Evidence 408;
- Ultratec and Sorenson agree to maintain the confidentiality of such information, including but not limited to, opposing any FOIA request; and
- Sorenson immediately disclose to Ultratec what confidential information it has disclosed, when and to whom.

Given the importance of these issues, we request a prompt response. Otherwise we will have no choice but to seek relief from Judges Crabb and Peterson.

Very truly yours,

QUARLES & BRADY LLP



Kristin Graham Noel

KGN:ddh

## **EXHIBIT B**

Jenner March 17 Letter

**CONFIDENTIAL**

March 17, 2015

Michael B. DeSanctis  
Tel 202 637-6323  
Fax 202 661-4828  
mdesantcis@jenner.com

**VIA EMAIL AND REGULAR MAIL**

Kristin Graham Noel  
Quarles & Brady LLP  
33 East Main Street  
Suite 900  
Madison, Wisconsin 53703

Re: Ultratec, Inc. v. Sorenson Communications, et al. -  
Communications with the Federal Communications Commission

Dear Ms. Noel:

The accusatory tone of your March 16, 2015 letter is entirely uncalled for. To be perfectly clear:

- No one is aware of anyone at Sorenson or CaptionCall, or their litigation counsel, ever having revealed any of Ultratec's Confidential Information to anyone not qualified under the Protective Order.
- At no time prior to my being admitted as counsel in the Wisconsin litigation did anyone share with me the substance of Ultratec's settlement offers or any other Ultratec Confidential Information protected under the Protective Order. The same is true for all of my colleagues at Jenner & Block.
- We discussed with Commission staff no more than is in our letter of February 27, 2015, which you have, and which was in response to your prior representations about your offer to the same staff.
- I am well aware that I and my colleagues on this matter "are now personally subject to the Protective Order," as are you and all parties to the agreement. We agree that these are sensitive issues, and intend always to treat them with care. That is why we expressly raised with you the issue of providing the third-party re-seller agreements to Commission staff. We did so out of respect for the Protective Order and in an effort to be nothing but forthright with you.

I propose that we have a call tomorrow afternoon, so that we both can move forward as planned this Friday. Please let me know what time tomorrow works best for you.

Kristin Graham Noel  
March 17, 2015  
Page 2

I look forward to speaking with you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael B. DeSanctis", followed by a long horizontal flourish line.

Michael B. DeSanctis  
*Counsel for CaptionCall LLC and Sorenson Communications, Inc.*

# **EXHIBIT C**

Quarles March 16 Letter



33 East Main Street  
Suite 900  
Madison, Wisconsin 53703  
608.251.5000  
Fax 608.251.9166  
www.quarles.com

Attorneys at Law in  
Chicago  
Indianapolis  
Madison  
Milwaukee  
Naples  
Phoenix  
Scottsdale  
Tampa  
Tucson  
Washington, D.C.

Writer's Direct Dial: 608.283.2615  
E-Mail: kristin.noel@quarles.com

March 16, 2015

**VIA - EMAIL**

Michael B. DeSanctis ([mdesantistis@jenner.com](mailto:mdesantistis@jenner.com))  
Jenner & Block LLP  
1099 New York Avenue, NW Suite 900  
Washington, DC 20001-4412

**RE: Ultratec, Inc. v. Sorenson Communications, Inc.**

Dear Mr. DeSanctis:

This letter is in response to your letter of March 12, 2015.

As an initial matter, you fail to address whether and when Sorenson or CaptionCall (collectively "Sorenson") revealed Ultratec's Confidential Information to you or any other person not qualified under the Protective Order or the Mediation Agreement, including the substance of the settlement offers and discussions between Ultratec and CapTel (collectively "Ultratec") and Sorenson. We reiterate our demand that you respond, in writing, what confidential designated information was disclosed to whom, when.

While you and two of your colleagues have since filed notices of appearances in the lawsuit, that in no way shields Sorenson from any prior violation of the Protective Order or Mediation Agreement. Moreover, the Protective Order specifically precludes you from using Ultratec's Confidential Information for any other purpose than the litigation. We ask again the question: *Did you or your colleagues at Jenner & Block know of the substance of Ultratec's offers prior to your representation to the FCC regarding those offers?*

While we agree that the parties should confidentially inform the FCC of the offers each made to the other (as outlined in our initial letter), we do not agree to disclose the terms of Ultratec's agreements with third parties. None of the actual offers of license incorporate or even mention such third-party licenses. You may not disclose any of Ultratec or CapTel's agreements with any third party, including CapTel's agreements with Sprint, Hamilton and AT&T. Those documents are subject to confidentiality agreements with CapTel's partners. Ultratec had specific limited authorization to produce them to Sorenson's litigation counsel, subject to the



Michael B. DeSanctis  
March 16, 2015  
Page 2


"Outside Counsel Only" designation of the Protective Order, which specifically precludes further disclosure.

More importantly for you, along with Sorenson and its other counsel, you are now personally subject to the Protective Order, which precludes you from making any disclosure of those agreements, or any other Ultratec-designated information, or from using them for any purpose other than the litigation. Moreover, Sorenson and its counsel are also under multiple other Court orders from Judge Crabb specifically ruling that the terms of those agreements are to remain confidential and under seal.

I suggest we have a phone call early next week to discuss this issue, including the scope of information that the parties agree to provide to the FCC and the procedures that the parties will use to accomplish such disclosure. Please let me know your availability.

Very truly yours,

QUARLES & BRADY LLP



Kristin Graham Noel

KGN:ddh

## **EXHIBIT D**

Jenner March 12 Letter

**CONFIDENTIAL**

March 12, 2015

Michael B. DeSanctis  
Tel 202 637-6323  
Fax 202 661-4828  
mdesanctis@jenner.com

**VIA EMAIL AND REGULAR MAIL**

Kristin Graham Noel  
Quarles & Brady LLP  
33 East Main Street  
Suite 900  
Madison, Wisconsin 53703

**Re: Communications with the Federal Communications Commission**

Dear Ms. Noel:

I am writing in response to your letter of March 6, 2015.

By way of background, our February 25 meeting with Federal Communications Commission ("Commission" or "FCC") staff had been arranged weeks in advance. Prior to the meeting, our intention was to discuss your client's frivolous opposition to CaptionCall's Application for Certification. That is what we discussed for most of the meeting.

The day before the meeting, however, we received your client's *ex parte* letter describing its meeting with the very same Commission staff in which your client discussed that it "offered to settle its dispute with Sorenson by offering Sorenson a license for use in IP-CTS." (Feb. 23, 2015 Letter from P. Marchesiello to M. Dortch). We strongly disagree with that characterization of your settlement offer, and told the Commission staff as much at the February 25 meeting. We did not provide staff with any documents, nor did we articulate any details beyond what was recounted in our *ex parte* letter, which you have.

I assume that you are not taking the position that, despite the protective order entered in 13-cv-346 and 14-cv-66 (W.D. Wisc.), Ultratec can affirmatively disclose its settlement offers to the Commission and characterize them as they wish, but CaptionCall cannot respond because of the same protective order. If my assumption is wrong, then perhaps we should bring the issue to Judges Crabb and Peterson as you suggest in your letter. In any case, we do not believe that we have disclosed any confidential information beyond responding at the same level of generality at which Ultratec first voluntarily disclosed its settlement offer to the same Commission staff.

At the end of CaptionCall's February 25 meeting, staff indicated that they had now heard two very different characterizations about whether and how Ultratec has offered to license its technology to

Kristin Graham Noel  
March 12, 2015  
Page 2

CaptionCall at reasonable rates, as the Commission's prior orders require. Staff thus asked that we provide documentation of exactly what was offered.

We have not yet responded to that request (because of the very confidentiality issues you raise in your March 6 letter), and had planned to raise the issue with you. As far as I am aware, neither CaptionCall nor Sorenson has provided any documentation or additional details to Commission staff, or had any further conversations with them, about your settlement offers.

To that end, we can accept the approach you have outlined on page 4 of your March 6 letter. We agree that all settlement information and offers will remain confidential under the protective order, subject to Federal Rule of Evidence 408, and not subject to FOIA. As you have requested, we can agree that each party will share with the Commission staff the documentation relevant to the settlement offers, pursuant to a formal request for confidentiality, and that we both will serve our respective filings on each other. To be clear, we plan to include Ultratec's agreements with Sprint, Hamilton and AT&T in what we provide to staff for comparison and in light of Ultratec's representations to CaptionCall that the terms of Ultratec's proposal were materially the same as the terms offered to those resellers.

We propose that we both make the filings described above on Friday March 20, 2015. Please confirm by Monday March 16 if you agree.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael B. DeSanctis". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael B. DeSanctis  
*Counsel for CaptionCall LLC and Sorenson Communications, Inc.*

## **EXHIBIT E**

Quarles March 27 Email

Jenner March 27 Email

Quarles April 13 Email

**Noel, Kristin G. (MAD x2615)**

---

**From:** Noel, Kristin G. (MAD x2615)  
**Sent:** Monday, April 13, 2015 1:53 PM  
**To:** 'Wilson, J. Douglas'  
**Subject:** RE: Proposed documents to be provided to FCC [QBLLP-ACTIVE.FID35716947]

Doug, we have not received a response to this email, which we sent some 17 days ago. Please advise.

Best, Kristin

---

**From:** Noel, Kristin G. (MAD x2615)  
**Sent:** Friday, March 27, 2015 6:38 PM  
**To:** 'Wilson, J. Douglas'  
**Subject:** RE: Proposed documents to be provided to FCC [QBLLP-ACTIVE.FID35716947]

Doug, as both your *ex parte* to the FCC and Michael's March 12 letter confirm, the FCC requested Sorenson provide documentation of "exactly" what Ultratec has offered Sorenson. What is Sorenson's basis for providing the FCC with incomplete information? Ultratec will not agree to any course of action that misleads the FCC, and thus does not consent to providing the FCC with only the attached documentation in the absence of the other licensing discussions, particularly in light of the false representations that Sorenson has made in your *ex parte*.

Moreover, while you and your firm may have been ignorant of the offers that Ultratec made to Sorenson, you now are on notice of the falsity of your representations to the FCC. How do you intend to address that?

Please advise.

Best, Kristin.

-----Original Message-----

**From:** Wilson, J. Douglas [<mailto:JDWilson@jenner.com>]  
**Sent:** Friday, March 27, 2015 2:32 PM  
**To:** Noel, Kristin G. (MAD x2615)  
**Subject:** RE: Proposed documents to be provided to FCC [QBLLP-ACTIVE.FID35716947]

Kristin,

Good afternoon. We cannot agree to produce the settlement communications you identified to the FCC. Does Ultratec consent to produce the attached licensing negotiations to the FCC?

Regards,  
Doug

-----Original Message-----

**From:** Noel, Kristin G. (MAD x2615) [<mailto:Kristin.Noel@quarles.com>]  
**Sent:** Wednesday, March 25, 2015 5:44 PM  
**To:** Wilson, J. Douglas  
**Subject:** RE: Proposed documents to be provided to FCC [QBLLP-ACTIVE.FID35716947]



Doug, I am checking in on the status of this. Were you able to speak with BC and Steve?

Best, Kristin

-----Original Message-----

From: Noel, Kristin G. (MAD x2615)

Sent: Friday, March 20, 2015 3:46 PM

To: 'Wilson, J. Douglas'

Subject: RE: Proposed documents to be provided to FCC [QBLLP-ACTIVE.FID35716947]

Confidential

Thank you for your time today. Attached is some further documentation of the discussions. As we discussed, some of the offers/counters were verbal, but can be further corroborated by BC Boren (in the case of the 11/6 offer), Steve Zager (anything thereafter), and Judge Ward (mediation offers/counters on 11/21). Thank you for agreeing to send me any further documentation Baker Botts and Akin may have as well.

As discussed, both sides will hold off on making a filing with the FCC on this issue today in anticipation that we will resolve this early next week.

Best, Kristin

-----Original Message-----

From: Wilson, J. Douglas [mailto:JDWilson@jenner.com]

Sent: Friday, March 20, 2015 1:22 PM

To: Noel, Kristin G. (MAD x2615)

Subject: RE: Proposed documents to be provided to FCC [QBLLP-ACTIVE.FID35716947]

Let's still talk at 2:30 unless you need to push.

-----Original Message-----

From: Noel, Kristin G. (MAD x2615) [mailto:Kristin.Noel@quarles.com]

Sent: Friday, March 20, 2015 1:58 PM

To: Wilson, J. Douglas

Subject: RE: Proposed documents to be provided to FCC [QBLLP-ACTIVE.FID35716947]

There is for some, but not for the verbal negotiations. You can confirm with BC Boren and Steve Zager.

I'm in a meeting out of the office until our call. Let me know if you want to push later.

---

From: Wilson, J. Douglas <JDWilson@jenner.com>

Date: March 20, 2015 at 12:46:01 PM CDT

To: Noel, Kristin G. (MAD x2615) <Kristin.Noel@quarles.com>

Subject: RE: Proposed documents to be provided to FCC [QBLLP-ACTIVE.FID35716947]

Kristin,

Is there written documentation for each of these? Would you please send me those communications so I could review before our call?

Thanks,  
Doug

-----Original Message-----

From: Noel, Kristin G. (MAD x2615) [mailto:Kristin.Noel@quarles.com]  
Sent: Friday, March 20, 2015 1:39 PM  
To: Wilson, J. Douglas  
Subject: RE: Proposed documents to be provided to FCC [QBLLP-ACTIVE.FID35716947]

Confidential

Doug, we have identified the following offers/counters as missing from your list:

**REDACTED**

Best, Kristin.

-----Original Message-----

From: Wilson, J. Douglas [mailto:JDWilson@jenner.com]  
Sent: Friday, March 20, 2015 7:43 AM  
To: Noel, Kristin G. (MAD x2615)  
Subject: RE: Proposed documents to be provided to FCC

Kristin,

The pdf of the 10.2.14 email I circulated yesterday did not included the revised term sheet. I've attached the corrected version to this email. Apologies for any confusion.

-Doug

-----Original Message-----

From: Noel, Kristin G. (MAD x2615) [mailto:Kristin.Noel@quarles.com]  
Sent: Friday, March 20, 2015 8:23 AM  
To: Wilson, J. Douglas  
Subject: Re: Proposed documents to be provided to FCC

Sure.

---

From: Wilson, J. Douglas <JDWilson@jenner.com>  
Date: March 20, 2015 at 7:10:15 AM CDT  
To: Noel, Kristin G. (MAD x2615) <Kristin.Noel@quarles.com>  
Subject: Re: Proposed documents to be provided to FCC

I can't. Can we do 2:30 ET?

> On Mar 20, 2015, at 7:35 AM, Noel, Kristin G. (MAD x2615) <Kristin.Noel@quarles.com> wrote:  
>  
> Let's talk at 2et. Thanks!  
>  
>  
>  
> \_\_\_\_\_  
>  
> From: Wilson, J. Douglas <JDWilson@jenner.com>  
> Date: March 19, 2015 at 10:40:22 PM CDT  
> To: Noel, Kristin G. (MAD x2615) <Kristin.Noel@quarles.com>  
> Subject: RE: Proposed documents to be provided to FCC  
>  
> Sure, I can speak any time in the afternoon other than between 1:30-2:30 ET. Let me know what works for you.  
>  
> You do not need to treat Michael's letters as subject to the protective order.  
>  
> -Doug  
>  
> -----Original Message-----  
> From: Noel, Kristin G. (MAD x2615) [mailto:Kristin.Noel@quarles.com]  
> Sent: Thursday, March 19, 2015 7:49 PM  
> To: Wilson, J. Douglas  
> Subject: Re: Proposed documents to be provided to FCC  
>  
> Hi Doug. I won't be back to the office until shortly before 11ET tomorrow. Is there a time in the afternoon we can talk?  
>  
> Also, a reminder to please confirm what, if any information, in Michael's letters to me re this issue are designated as Confidential information of Sorenson or CaptionCall under the PO  
>  
> Thanks.  
>  
>  
>  
> \_\_\_\_\_  
>  
> From: Wilson, J. Douglas <JDWilson@jenner.com>  
> Date: March 19, 2015 at 6:17:21 PM CDT  
> To: Noel, Kristin G. (MAD x2615) <Kristin.Noel@quarles.com>  
> Cc: DeSanctis, Michael B. <MDeSanctis@jenner.com>, Flynn, John L. <JFlynn@jenner.com>  
> Subject: Proposed documents to be provided to FCC  
>  
> Kristin,  
>  
> Good evening. Attached are the documents CaptionCall proposes to provide to the FCC with Ultratec's consent. We would file these documents as confidential under the FCC's rules and request that they be treated as exempt from FOIA. We continue to believe that the third-party agreements should also be given to the FCC. I look forward to discussing with you tomorrow. If there are any additional documents that Ultratec intends to provide to the FCC, I request that you send them to me before our call scheduled for 11AM ET tomorrow so that we may review.  
>  
> Regards,  
> Doug  
>  
> \_\_\_\_\_



> J. Douglas Wilson  
>  
> Jenner & Block LLP  
> 1099 New York Avenue, N.W.  
> Suite 900, Washington, DC 20001-4412 |  
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